

2018 JUL -9 AM 10:39

IN THE FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

STATE OF NEW MEXICO,

Plaintiff,

vs.

No. D-101-CR-2016-659

ROBERT MONDRIAN POWELL

Defendant,

**ORDER DISMISSING CASE FOR VIOLATION OF DEFENDANT'S SIXTH
AMENDMENT RIGHT TO A SPEEDY TRIAL**

THIS MATTER having come before the court for hearing on June 22, 2018 upon motion of the defendant and having heard arguments of the parties with Robert Mondrian Powell represented by Jennifer Burrill of the Law Office of the Public Defender and the State represented by Martin Maxwell, having heard testimony from the defendant, and the court being sufficiently advised of the circumstances finds that the defendant's Sixth Amendment right to a speedy trial was violated based on the following factors:

SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL

The right to a speedy trial is a fundamental right of the accused, guaranteed by the Sixth Amendment to the United States Constitution and applicable to the states through the Fourteenth Amended. *State v. Garza*, 2009 NMSC 038, ¶10, 146 NM 499. This right attaches when the defendant is arrested. *State v. Sanchez*, 108 N.M. 206, 206, 769 P.2d 1297, 1297 (Ct.App.1989).

Mr. Mondrian Powell has been in custody twenty (20) months since his arrest on October 14, 2016. The presumptive trigger has been met and as such judicial review is appropriate.

The Court's evaluation of the four speedy trial factors outlined by *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), *State v. Kilpatrick*, 104 N.M. 441, 444, 722 P.2d 692, 695 (Ct.App.1986); *Zurla v. State*, 109 N.M. 640, 642, 789 P.2d 588, 590 (1990) show:

A. Length of Delay

The court agrees with the State in finding this case is a complex case due to the geographic diversity of the case with three crime scenes stretched between Santa Fe County and Dona Ann County, the advanced level of decomposition of the body, and Dr. Edelman, a key medical expert witness, moving out of state while this case was pending. A delay is presumptively prejudicial if the delay exceeds eighteen in a complex case. *State v. Brown*, 2017-NMCA-046, ¶ 14, 396 P.3d 171, 177. The presumptive trigger for review has been met and at the time of this hearing is twenty (20) months. The current jury selection setting is in August of 2018 and would be twenty-two (22) months at the time of trial.

B. Reason for Delay

Barker identified three types of delay, indicating that different weights should be assigned to different reason for the delay. *State v. Ochoa*, 2014 -NMCA-065, NMCA Docket No. 31,243 (March 11, 2014) citing *State v. Spearman*, 2013 NMSC 23 ¶25. These are (1) deliberate or intentional delay; (2) negligent or administrative delay; and (3) delay for which there is a valid reason. *Id.* citing *Garza*, 2009 NMSC 038, ¶¶25-27.

The Court finds that none of the delays were done to intentionally frustrate the defense, although that may have been the end result. The numerous delays in this case were in large part due to intuition issues that included attorney turn over at the district attorney's office and extended leave of public defender Damian Horne, hostility between Natalie Perry, the first prosecutor assigned to this case, and Jennifer Burrill the defendant's counsel, late disclosure of discovery by the district attorney's office, problems setting up witness lists, and an overall lack of due diligence prosecutors Natalie Perry and Kevin Nault. These are negligent or administrative delays and weigh highly against the State. None of these issues were the fault of Mr. Mondrian Powell.

C. Assertion of Right to Speedy Trial

There has been an assertion of his right to a speedy trial throughout the pendency of his case. The right was initially asserted in the magistrate court and again when relief was requested in the district court due to delays in holding the preliminary hearing. Mr. Mondrian Powell has not waived on his assertion of his right to a speedy trial since the time of his arrest.

D. Prejudice to the Defendant

Mr. Mondrian Powell, who is currently fifty-nine (59) years old, has been in continuous custody since his arrest on October 14, 2016. Since that time, it is visibly apparent that he has lost a significant amount of weight. The testimony presented that he has lost 72 pounds supports this observation. Prior to being incarcerated Mr. Mondrian Powell had post-traumatic stress and diverticulitis that have both been exacerbated by the stress of his twenty (20) month incarceration. The court heard evidence during the defendant's testimony that stressors experienced by Mr. Mondrian Powell include both physical and sexual assaults by other inmates

and medical care that has not resolved the low blood pressure and heart issues which developed while he was in custody. While the time of the case stretches only two months past the triggering mark for a speedy trial analysis, Mr. Mondrian Powell's pretrial incarceration has been oppressive and as such he has been prejudiced.

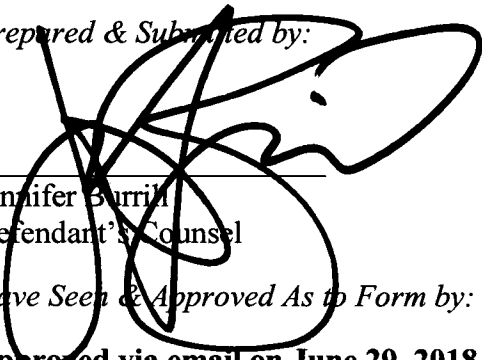
The defendant has been prejudiced due to the oppressive pretrial incarceration over the twenty months this case has been pending in the courts. The court finds that his Sixth Amendment right to a speedy trial has been violated. IT IS ORDERED that the case is dismissed and the defendant shall be released from custody immediately.

IT IS SO ORDERED.



THE HON. GLENN ELLINGTON

Prepared & Submitted by:



Jennifer Burritt
Defendant's Counsel

Have Seen & Approved As to Form by:

Approved via email on June 29, 2018 at 8:39 am

Martin Maxwell
State's Counsel